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IN THE SUPREME COURT OF THE STATE OF UTAH

JULIE M. CHILD,

Plaintiff-Appellant,

vs.

Case No. 18169

THE BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION OF
UTAH,

Defendant-Respondent.

DEFENDANT'S BRIEF

**Appeal from a decision of the Department of Employment Security,
State of Utah, as upheld by the Appeals Referee
and the Board of Review of the Industrial Commission,
State of Utah**

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff-Appellant,

vs.

Case No. 18169

THE BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION OF
UTAH,

Defendant-Respondent.

DEFENDANT'S BRIEF

NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(i), Utah Code Annotated 1953, as amended, seeking judicial review of a decision of the Board of Review of the Industrial Commission of Utah, affirming the decision of an Appeal Referee which denied benefits to the claimant, Julie M. Child, effective August 16, 1981, pursuant to Section 35-4-5(a), Utah Code Annotated 1953, as amended (Pocket Supplement, 1979), on the grounds that the claimant voluntarily left work without good cause.

DISPOSITION BELOW

Plaintiff, Julie M. Child (hereinafter referred to as claimant), was denied unemployment benefits effective August 16, 1981, by a Department Representative pursuant to Section 35-4-5(a), Utah Code Annotated 1953, as amended (Pocket Supplement, 1979) (hereinafter referred to as the Act), on the grounds she voluntarily left work without good cause. (R.0039) The claimant appealed to an Appeal Referee who affirmed the decision to deny benefits by a decision dated October 14, 1981. (R.0023-0024) Upon further appeal, the Board of Review affirmed the decision of the Appeal Referee by decision issued December 4, 1981, in Case No. 81-A-3663, 81-BR-352.

RELIEF SOUGHT ON REVIEW

Claimant seeks a reversal of the Board of Review's decision denying unemployment benefits. Defendant seeks affirmance of such decision.

STATEMENT OF FACTS

Defendant substantially agrees with the statement of facts set forth in claimant's Brief.

ARGUMENT

POINT I

THAT IN REVIEWING DETERMINATIONS OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE FINDINGS OF THE BOARD OF REVIEW IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated, 1953, provides in part:

In any judicial proceedings under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said Court shall be confined to questions of law.

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be disturbed. Martinez v. Board of Review, 25 U. 2d 131, 477 P. 2d 587 (1970). In analyzing the above-referenced review provision, this Court has stated:

Under Section 35-4-10(i) the role of this Court is to sustain the determination of the Board of Review unless the record clearly and persuasively proves the action of the Board of Review was arbitrary, capricious, and unreasonable. Specifically, as a matter of law, the determination was wrong; because only the opposite conclusion could be drawn from the facts. Continental Oil Company v. Board of Review of the Industrial Commission of Utah, (Utah, 1977) 568 P. 2d 727, 729.

POINT II

THE COMMISSION DID NOT ERR IN DETERMINING THAT CLAIMANT VOLUNTARILY LEFT WORK WITHOUT GOOD CAUSE.

Section 35-4-5(a), Utah Code Annotated, 1953 (Pocket Supplement, 1979) provides:

5. An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(a) For the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for such services equal to at least six times the claimant's weekly benefit amount; provided, that no claimant shall be ineligible for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall in cooperation with the employer consider for the purposes of this act, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

This Court has previously held that the purpose of the Employment Security Act is to assist a worker and his family in times when he is out of work without fault on his part. Kennecott Copper Corporation Employees v. Department of Employment Security, 13 U. 2d 262, 372 P. 2d 987 (1962); and that the Department is to determine a claimant's eligibility for unemployment compensation by adhering to the volitional test. Olaf Nelson Construction Company v. The Industrial Commission, 121 U. 521, 243 P. 2d 951 (1952); Mills v. Gronning, (Utah, 1978) 581 P. 2d 1334.

The issue in the instant case is a relatively simple one. Is a claimant entitled to unemployment benefits after voluntarily leaving work to accompany her spouse to a new area in order for the spouse to attend school?

Defendant substantially agrees with the definition of "good cause" as set forth in Plaintiff's Brief, pages 5-6. The definition of "good cause" may be summarized by the quotation included in Plaintiff's Brief from the case of Denby v. Board of Review of the Industrial Commission, 567 P. 2d 626 (Utah 1977):

"Good cause" has been defined as "such cause as would similarly affect persons of reasonable and normal sensitivity, and is limited to those instances where the unemployment is caused by external pressures so compelling that a reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances." (Citation omitted, emphasis added)

In the instant case it is undisputed that the reason for the claimant's voluntary leaving was to accompany her spouse to California in order for him to attend law school. It is well established that quitting work to attend school is not good cause. General Rules of Adjudication, Voluntary Leaving, Section 40; Norton v. Department of Employment Security, 22 U. 2d 24, 447 P. 2d 907 (1968); Townsend v. Board of Review, 27 U. 2d 94, 493 P. 2d 614 (1972); Schultz v. Board of Review, 606 P. 2d 254 (Utah, 1980). This Court has not had prior opportunity to rule on the specific issue presented in the instant case, that is, whether a claimant who quits to follow her husband in order for him to attend school does so with good cause. The position of the Commission is straightforward: The policy of the State that leaving work to attend school is not good cause should be extended to the claimant who leaves work to accompany his/her spouse in order for the spouse to attend school.

It should be noted that the rules and cases cited by claimant in support of her position in this case pertain primarily to leaving work to accompany a spouse when the spouse has other employment at the new location. Claimant does not cite any cases which allow benefits to a claimant who quits to accompany a spouse to a new area where the spouse begins attending school. The reason for this is readily ascertainable. As stated in the Denby decision, a quit is with good cause when that quit is motivated by external pressures so compelling that a reasonable, prudent person would be justified in quitting. In the instant case claimant alleges that such compelling circumstances existed in her need to preserve the family relationship. Yet that need only arose through the personal desire of the claimant's spouse to attend law school. Such personal reasons are certainly not "external pressures

so compelling" as to constitute good cause. In this regard the claimant's statement that a denial of benefits would mean the only compelling reason for quitting to accompany a spouse would be when that spouse has other work in the new area is not a correct statement of policy or the law. Personal reasons may exist which compel an individual to leave work and move to a new area, without having already secured new work, such as a need to care for an ill family member or other circumstances which constitute legitimate external pressures to which a reasonably prudent person would respond. Thus, it may be said that "external compelling" circumstances are those circumstances which originate outside of the control of the claimant or as in the instant case outside of the control of the claimant's spouse. When the claimant's unemployment becomes the result of her own volitional action, or that of her spouse, good cause may not be found to exist.

The foregoing analysis of good cause finds support in the reasoning of a Superior Court of Pennsylvania in the case of Bliley Electric Company v. Unemployment Compensation Board of Review, 158 Pa. Super. 548, 45 A. 2d 898, 903 (1946). In the Bliley case the Court explained good cause in terms which are now well known and consistent with most jurisdictions. The Court then went on to apply its definition of good cause to the situation of a married woman who leaves her work to join or accompany her husband, as follows:

When we approach the problem of a married woman who leaves her work to join her husband we realize immediately that we are in the presence of a compulsion which readily supplies a personal reason and a good cause. Under our law, it is the legal right of the husband to select the marital domicile and it is the legal duty of the wife to reside with him. Hence, when a husband moves the marital domicile to a distant point where he secures work and his wife voluntarily leaves her work to accompany him, her compliance with the duty which the law casts upon her satisfies the requirement of "good cause."

On the other hand, joining a husband at a distant point may not always constitute good cause for a wife's leaving her employment. Obviously, a wife joining her husband who is enjoying an extended vacation, would not be justified in leaving her employment, unless per chance a serious illness required her attendance upon him. A husband may take a temporary or transient job in another locality without changing the marital domicile; in that case, no other circumstances appearing, a wife would not be justified in leaving her employment. The nature of the circumstances in each individual case, the strength and effect of the compulsive pressure of external and objective forces must be evaluated, and if they are sufficiently potent, they become relevant and controlling factors.

The Court in Bliley found the claimant had good cause to leave work and join her husband in another state. However, in that case the claimant's husband had been transferred to the other state by the military. In the instant case the claimant's reason for leaving work to accompany her husband was solely to be with him while attending school. Thus, compulsive pressure of external and objective forces, referred to in the Bliley decision, simply do not appear in the instant case.

POINT III

THE COMMISSION DID NOT ERR IN ITS REFUSAL TO APPLY THE PROVISIONS OF EQUITY AND GOOD CONSCIENCE TO THE FACTS OF THE CLAIMANT'S CASE, AND SUCH DETERMINATION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Claimant contends that even if good cause is not established for the claimant's voluntary leaving of employment, it would be contrary to equity and good conscience to deny benefits under Section 5(a) of the Act. The basis of the claimant's contention in this regard is that the remedial purpose of the Act to provide a cushion to the shock and rigors of unemployment

balances in favor of allowance of benefits and that the claimant's decision to leave work was reasonable to preserve the marital relationship with her spouse.

The General Rules of Adjudication, Voluntary Leaving, Section 210, explains the application of equity and good conscience, in part, as follows:

If it is determined that "good cause" does not exist, then the surrounding circumstances must be reviewed to determine whether the claimant's actions were such that a disqualification under this section of law would be contrary to equity and good conscience. The statute requires that three factors be considered in making a determination of whether equity and good conscience required the disqualification to be abated:

1. The purposes of the Employment Security Act.
2. The reasonableness of the claimant's actions; and
3. The extent to which the claimant's actions evidence a genuine attachment to the labor market.

The Defendant does not dispute that the claimant evidenced a genuine attachment to the labor market by reason of her efforts to find work after relocating in California. However, the claimant's decision to leave work was not reasonable either under the remedial nature of the act or in her desire to preserve the marital relationship. As noted in the claimant's Brief, at page 13, the purpose of the Employment Security Act is:

[R]emedial to protect the health, morals and welfare of the people by providing a cushion against the shock and rigors of unemployment. Being remedial under the police powers and not imposing limitations on basic rights, it should be liberally construed. Singer Sewing Machine Company v. Industrial Commission, 134 P. 2d 479, 485, (Utah, 1943).

As previously noted herein this Court has also held that the purpose of the Employment Security Act is to assist a worker and his family in times when

he is out of work without fault on his part, and that the Department is to determine a claimant's eligibility for unemployment compensation by adhering to the volitional test. It is apparent from the fact that the Legislature did not eliminate the "at fault" concept in unemployment cases, that the Legislature must have intended a melding or blending of the fault concept with the purpose of maintaining purchasing power in the community when an individual becomes unemployed by reason of a voluntary quit, but under mitigating circumstances. For that reason, the commission is required to also look at the reasonableness of the claimant's actions under the circumstances as well as whether the claimant has evidenced a genuine continuing attachment to the labor market.

In the instant case the claimant contends that her actions were reasonable and required in order to preserve the family relationship. As stated by the claimant in her Brief, at page 14, ". . . it is not conceivable that a successful marriage could exist with the partners permanently residing in different states." (Emphasis added) Claimant offers no explanation why she would have been required to permanently reside in Utah while her husband attended law school in California. Obviously, alternatives were available to the claimant other than simply quitting her work on August 14, 1981. Such alternatives could have included a search for work in California during a vacation period or with a leave of absence from her Utah employer, prior to her terminating her employment and moving to California.

Although the State of Washington, as cited by the claimant in her Brief, and other jurisdictions have chosen to allow unemployment benefits as a matter of state policy to aid in the preservation of the marital relationship

when one's spouse leaves the area and the other must quit work to accompany the spouse, not all states have adopted such a policy. For instance, Pennsylvania, Alabama, Louisiana, Montana, New York, South Carolina and Virginia hold that leaving work to accompany a spouse is not good cause. See Annotation, 13 ALR 2d 876. According to a Massachusetts Court, the Courts of New Jersey, New York and Pennsylvania had held that family obligations could justify leaving a job, but the Legislature in each of those states nullified the effect of the Court decisions by amending their statutes. Raytheon Company v. Director of Division of Employment Security, 196 N.E. 2d 196 (Mass., 1964). In the case of Ayers v. Employment Security Department, 536 P. 2d 610 (Wash. 1975), cited by claimant in her Brief, Hamilton, Associate Justice, dissented, stating:

In our mobile society and economy it is not uncommon on change of employment cites or locations for families to be temporarily separated, all without adverse effect upon the family relationship. There is no evidence whatsoever in this case that the temporary separation which would have been involved would have threatened the marriage, upset the domestic tranquility, or otherwise cause any unreasonable inconvenience.

Although the foregoing statement is found in a dissent and may not be considered as having the same force and effect as the holding of the Ayers case, it states very well the position of the commission in cases such as the instant matter.

It may also be noted that the position of the commission with respect to the issue herein is not inconsistent with legislative intent, as evidenced by a recent amendment to Section 5(a) of the Act in which the 1982 Session of the Utah Legislature has denied benefits to a claimant who leaves work to accompany a spouse. (Senate Bill 68, 1982 Budget Session.) While this most

recent amendment is not cited as the law applicable to the instant case, it does evidence the intent of the Legislature with respect to the question herein presented.

CONCLUSION

The denial of benefits in this case is consistent with the legislative intent underlying the Utah Employment Security Act and the decision of the commission is supported by substantial competent evidence. It should, therefore, be affirmed.

Respectfully submitted this _____ day of April, 1982.

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By _____
K. Allan Zabel
Special Assistant Attorney General

CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Defendant-Respondent's Brief postage prepaid to the following this _____ day of April, 1982: Julie M. Child, Plaintiff-Appellant, 7770 Center Parkway #63, Sacramento, CA 95823.